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CONTENDES

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Abraham Lincoln's Contemporaries

Joseph Holt

Excerpts from newspapers and other
sources

From the files of the
Lincoln Financial Foundation Collection

JOSEPH HOLT

AN ELIZABETHTOWN LINCOLN CONTEMPORARY.

John W. Holt was admitted to the bar in March, 1802. Mr. Holt settled in Elizabethtown and was one of our citizens for a few years. He was a quiet, unobtrusive gentleman and found that the practice of law did not suit his pacific disposition. Retiring from the practice, he settled on the Ohio River in Breckenridge near Stephensport and was for years a successful farmer. He lived and died in great tranquillity and was the father of Dr. Richard Holt and Thomas Holt, the latter now occupying the old homestead. He was also the father of Judge Advocate General Joseph Holt of Washington City.

HAYCRAFT'S HISTORY

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John W. Holt - Haycraft's History

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March Term - 1802.

John W. Holt sworn as attorney.

Holt, Joseph, Jurist, b. in Breckenridge County, Ky., 6 Jan., 1807. He was educated at St. Joseph's College, Bardstown, and at Centre College, Danville, and in 1828 began to practice law at Elizabethtown, Ky. He removed to Louisville in 1832, was attorney for the Jefferson Circuit in 1833, and in 1855 went to Port Gibson, Miss., where he attained eminence in his profession. He became an adherent of Richard M. Johnson, and a speech that he made in Johnson's favor in the National Democratic Convention of 1836 made him widely known as an orator. At this time he was counsel for the City of Vicksburg in a celebrated suit involving the claim of the heirs of Newit Vick, founder of the city, to a strip of land along the river-front that Vick had devoted to the public use. He was a frequent opponent of Sergeant S. Prentiss. Holt returned to Louisville in 1842, and after a trip to

Europe was appointed Commissioner of Patents by President Buchanan in 1857. He became postmaster-general in 1859, and when John B. Floyd withdrew from the Cabinet in 1860, he assumed charge of the War Department. He actively co-operated with General Scott in providing against hostile demonstrations at the inaugurations of President Lincoln in 1861, and in a report, which was afterwards published, described the plot that had been made to seize the Capital. Although he had been a Douglas Democrat, Mr. Holt now gave his earnest support to the administration, denounced the policy of "Neutrality" in his native state, and advocated the Union cause there and elsewhere. In the latter part of 1861 he was one of the commission that was appointed to investigate the Military Claims against the Department of the West. President Lincoln made him Judge-Advocate-General of the Army in 3 Sept., 1862, with the rank of Colonel, and on the establishment of the bureau of Military justice in 1864. He was put at its head with the same title, but with the rank of brigadier-general. He expressed his strong approval of the emancipation proclamation of 1862, and on 26 Aug., 1863 addressed an opinion to Sec. Stanton in which he approved the enlistment and subsequent emancipation of those negroes who, living in states to which the proclamation did not refer, were still in slavery. Judge Holt bore a conspicuous part in various court-martial and military commissions, especially in that which tried the assassins of President Lincoln. He was brevetted Major-General, U.S. Army, on 13 March, 1865, for "faithful, meritorious, and distinguished services in the bureau of Military Justice during the war", and on Dec. 1, 1875, was retired on his own request, being over 62 years of age. Since that time he has resided in Washington, D.C.

TITLE OF PAMPHLET

Vindication/of/Judge Advocate General Holt./ From/The Foul Snalder's/of/Traitors,
their Aiders, Abettors, and sympathizers,/Acting In The/Interest of Jefferson
Davies/.

Holt - accused of withholding facts concerning petition signed for release of
Mrs. Suratt. Holt was of opinion that Davis was guilty of conspiracy to
assassinate Lincoln. Holt was very much anti-Davis.

BEN HARDIN - LITTLE
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Joseph Holt married a daughter of Governor Charles Anderson Wickliffe:
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In many counties where he practiced, (Ben Hardin) he had local partners with whom
he shared fees in that particular court. The well known Joseph Holt, of Washing-
ton, in the outset of his career, was thus connected with him.

page 578

A distinguished lawyer and ex-member of a former presidential cabinet, Hon.
Joseph Holt, writes that he does not feel that he could contribute any information
in illustration of Mr. Hardin's character." Yet he adds: "He was a man of the
most marked individuality of character, and this individuality was constantly
maintained. He was uniformly kind to me, both personally and professionally,
so that with a glowing admiration of his wonderful intellectual gifts, the
recollections of him that I cherish , is at once grateful and affectionate."

JOSEPH HOLT

COMMONWEALTH ATTORNEY, POSTMASTER GENERAL
OF THE UNITED STATES, SECRETARY OF WAR,
AND JUDGE ADVOCATE GENERAL OF THE UNITED
STATES.

On the banks of the beautiful Ohio about three miles above Cloverport, the little village of Holt is located, where on January 1, 1807, was born Joseph Holt. Very little is known of his boyhood except that he grew up as any healthy normal boy. After attending school some in his early life, he attended St. Joseph's College at Bardstown for a time completing his academic education at Centre College, Danville, Kentucky. After graduating he entered the law office of Robert Wickliffe, at Lexington, Kentucky, where he prepared for the profession of his choice. He became a qualified lawyer before he was twenty-one and in 1828 entered into a partnership with his celebrated friend, Benjamin Hardin, at Elizabethtown, Kentucky. Four years later at Louisville, Kentucky, he combined with his legal work, the assistant editorship of the Louisville Advertiser, a daily newspaper published by Shadrick Penn. In the two succeeding years, he was Commonwealth Attorney for that District, and also as attorney rode the old Jefferson Circuit. It was in 1836 that his great oratorical ability caused his name to be known throughout the century. A Democrat, he became a member of the party's National Convention - the Convention which nominated Martin Van Buren and Richard M. Johnson for President and Vice-president. The same year Holt moved his residence farther south to Port Gibson and Vicksburg, Mississippi where he attained eminence in his profession. Sergeant S. Prentice, the distinguished orator was a frequent opponent in Court at that time. As counsel for the city of Vicksburg, Holt handled a celebrated case involving claims made by the heirs of the Rev. Newill Vick, founder of the city.

Holt's ill health required temporary retirement from his profession and in 1842, he returned to Louisville, Kentucky. He made two trips to Europe and the near East, in 1848 and 1849. Also in 1850 and 1851, during these years, he ascended the River Nile, as far as the first cataract near Assuan. He crossed the desert by way of

Mt. Siani and Petra, returning to America, he took part in the campaign which resulted in the election of President Pierce. An elegant speech made by him at that time was widely published as also was the address by him in 1856 at Frederick, Maryland, on behalf of James Buchanan, then a candidate for the Presidency.

In April 1857, Holt transferred his residence to Washington, D. C., where he was soon appointed Commissioner of Patents. Upon the death of Aaron B. Brown, in 1859, he became Postmaster General, constantly advocating the policy of making the Department self-sustaining. He held this office until the latter part of 1860. In December of that year, John Buchanan Floyd, Secretary of War, tendered to President Buchanan, his resignation from the War Department. Joseph Holt was appointed to fill the vacancy and accepted the office on the last day of the year. He remained as head of the War Department until some days after the inauguration ceremony of Lincoln. Lofty and unselfish, devoted patriotism and loyalty, the greatest characteristics of his entire career, were in plain evidence throughout that short period in the War Department. Holt had been a Douglas Democrat, but after Lincoln entered the White House, he gave his hearty support to the administration. He censured the "neutrality" policy of his native state and advocated the cause of the Union. In a letter written in May 1861, he indignantly classified the right of secession as a right with no foundation in jurisprudence or logic in our own, or political history.

In an address delivered during the summer of 1861, he denounced the rebellion and urged the maintenance of the Union at all hazards and costs. He expressed the strongest approval of Lincoln's Emancipation Proclamation in September 1862. On September 3, 1862, President Lincoln made Joseph Holt Judge Advocate General of the Army with the rank of Colonel. Three years later the Bureau of Military Justice, established with Holt as its head as a Brigadier General. An opinion of General Holt given early in 1863, resulted in the strengthening of the Union Armies by large bodies of colored troops at a time when reinforcements were badly needed.

The question of enlistment of slaves was referred to him for his views as to the legality. He replied in the affirmative, and writing of the negro soldier later said that, "uncrushed by the shackles of slavery so long worn, they fought with heroic loyalty for the flag of freedom on every battlefield upon which they appeared." Judge Holt presided at the trial of the assassins of Lincoln and was in many other famous cases. He was made a Major General in the United States Army only in March 1865, for "faithful, meritorious and distinguished service in the Bureau of Military Justice, during the War." At his own request, he was retired from active service in December 1875. He was then sixty-eight years of age. He remained a resident of Washington until the date of his death, or August 1, 1894. His body rests in the family burying ground at the residence near where he was born. (The above is from a paper read by Harry Hamilton, Jr. before the High School in Cloverport, Kentucky.)

During his lifetime, Mr. Holt built a small brick church near the family residence in memory of his mother with a seating capacity of about two hundred (200) I want to cite in this connection that I have also on file in the records of the Breckinridge County Historical Society, a paper given by Mary Johnson, entitled: "Speech by Honorable Joseph Holt, of Kentucky at Irving Hall, New York, September 3, 1861. Also a paper by Hazel Whorley; "The Career of Honorable Joseph Holt"; also papers by Raymond Nelson Warren, James Burden, Margaret May, Owen Maysey, William Chapin, Dorothy Bohler, and other unsigned papers which were given, which space forbids me quoting further, and to whom I am greatly indebted for the information given.

This material is from a paper prepared and read by Judge D. D. Dowell of Hardinsburg, Kentucky before the Hardin County Historical Society March 1, 1938.

Owensboro-Messenger Oct 21, 1939 (Sunday Edition) near this date)
COMPLETION OF HIGHWAY 64 THROUGH BRECKINRIDGE COUNTY

WILL OPEN SECTION WHERE THREE-STORY HOLT HOUSE WAS

BUILT IN 1839

Owner Served in Cabinet of Abraham Lincoln as Postmaster General
and Secretary of War.

By W. E. Daniel Staff Writer, Owensboro Messenger

Holt, Ky. Oct 21.-- Completion of Highway 64 through Breckenridge county will not only open to year round comfortable travel a section now reached in the winter only over rough roads but, to lovers of the historical picturesque, permit easy access to a once highly developed region where the stateliness of palatial homes matched in regal splendor the brilliance of a period that was eclipsed when magnificent passenger steamers ceased to plow the Ohio.

Already a beginning has been made and instead of using the low-lying river road, subject to overflow and perilously near the Ohio, there is a graded and drained sector leading off Highway 60 about three miles East of Cloverport, which cuts thru the hills to an intersection with the old road near Holt. A delegation from the Addison and Stephensport neighborhoods visited Frankfort recently with a plea for extension to the latter town immediately, and when possible a continuation thru Union Star and Frymire to a point near Rhodelia in Meade county, the present terminus of the improved road that passes thru Andyville and Payneville before entering Highway 60 a few miles sou theast of Brandenburg.

Pointing north from Highway 64 in Meade county is a narrowing sector that ends on the river across from Leavenworth, Ind., which includes a fabulously rich territory, a wide bottom shelving back from the Ohio that produces annually vast yields of corn and other crops. Within that area is Concordia, once a thriving river town and Moolleyville and Battletown, all practically isolated in winter without any improved road, a need to be met when the highway is extended as planned.

The Holt House

Most imposing of the old homes in the Holt-Addison section is the three-story 21-room Joseph Holt House built in 1839, and owned and occupied the past 25 years by Mr. and Mrs. J. F. Dutschke. The grave the Holt house and others, but less of the builder is in a brick-walled burial ground adjacent to the home. Nearby is the grave of his mother, Mrs. John Holt, born in 1788. A tall monument marks the burial place of Joseph Holt, who was not only commissioner of patents but served in the Abraham Lincoln cabinet as postmaster general and secretary of war, and later was judge advocate general.

In August 1839 the beautiful home was completed, and within its massive walls, typical of the buildings of that day, life ran to festival measure. Guest came to remain weeks; to enjoy the opulence of the rural home; to reveal in the scenery that included a broad lowland that touched the river nearby, and lifted to high precipitous hills near mountains. Now all this belongs to the Dutschkes, more than 1,000 acres, over which roam cattle and hogs by the hundreds, and from the cultivated part of which crops are harvested to fill the large barns. Keared within a few miles of the Holt home they left Kentucky to live 12 years in Southern Oklahoma, and to return here a quarter century ago to establish a permanent residence.

OLD METHODIST CHURCH

Like an engraving penciled against the hills in the Holt Methodist church down a narrow, tree-bordered land from the home, its history a part of the encompassing traditions of the Holts. It stands cathedral like in a grove, apart from the noise of the road but linked with the many legends that are deeply rooted there.

In the front yard of the Dutschke home, replete with memories of the Holts, are two large metal urns, made in 1852, and between them a large statue of a woman, are shaded by oaks and maples and a large beech tree brought as a tiny shoot from Holland. The rooms are large, the ceilings high and the wide hallways with winding stairs open in places to the views of the third floor, are examples of the magnitude of the builder's plans and magnificence wrought in following his designs.

All the beauty that clutches about imposing, old house in the valley will be available when the highway is completed. Across the river is a slope, mantled in greenery when spring clothes the forests and colorful when autumn traipses in, and rank upon rank the hills rise to reflect their serrated peaks in the Ohio, flowing as peacefully now as when it was the transportation route for those who came to share the royal hospitality of the Holts.

Holt family

P. S. In the cemetery nearby the Holt House is a monument to Mr. Joseph Holt, which reads as follows.

Joseph Holt
Orator and Statesman
Born Jan. 6, 1807
Died Aug. 1, 1894
Held Successfully Commissor of Patents
and Postmaster General
Secretary of War
Judge Advocate General
During the Civil War.

Note. Mr. Dutschke said that this man's writing is not all correct.





Lincoln Lore

October, 1981

Bulletin of the Louis A. Warren Lincoln Library and Museum. Mark E. Neely, Jr., Editor.
Mary Jane Hubler, Editorial Assistant. Published each month by the
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Number 1724

Presidential Clemency for Civilians Tried by Military Commission

Writers on Lincoln spend so much of their time dispelling myths that cynicism becomes an occupational hazard. It is important to remember that many of Lincoln's attributes which have taken on mythic status were genuine. "Honest Abe" really was honest. Lincoln really was a humorous man in a rather humorless era. He was also a forgiving man in a war-torn period in which hatred was the national norm.

The most memorable instances of President Lincoln's clemency involved stays of soldiers' executions. He was so famous for such acts even in his own day that in 1863 Francis DeHaes Janvier published a poem, "The Sleeping Sentinel," which celebrated the President's last-minute carriage ride, pardon in hand, to save a Vermont soldier boy from the firing squad. William Scott, allegedly sentenced to die for sleeping while on guard duty, was the near-victim in Janvier's poem. James E. Murdoch, a renowned elocutionist, declaimed the poem on numerous occasions, and some say the President himself was present at one of the declamations. "No one," *Harper's Weekly* stated, "ever heard it without being moved to tears."

Historians were later moved not to tears but to the archives

where they had trouble finding documentary proof of the case. A record of William Scott's case reached the President's office from the Judge Advocate General's office (the file is not now present in the JAG papers in the National Archives). William E. Barton, who wrote history in the iconoclastic style typical of the 1920s, chose the myth of the sleeping sentinel as one of the Lincoln anecdotes he exposed as untrue or at least unproved.

Lincoln's reputation for acts of clemency survived Barton's assault, as well it should have. In general, however, that reputation has rested less on definitive statistics than on numerous pieces of testimony from government insiders who knew of the President's kindheartedness. Jonathan T. Dorris, the foremost modern student of pardon and amnesty in Lincoln's era, did find definitive statistics on Presidential pardons in civilian courts, but statistics on military courts have proved elusive.

Military statistics do exist, however. The numerous cases involving soldiers must await further study in the future, but the cases involving civilians tried by military commissions provide a manageable number of cases for analysis here.



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 1. St. Louis citizens flocked to the provost marshal's office to procure passes for travel. This was the most widely felt burden of martial law in Missouri.

From 1863 to the end of Lincoln's administration, the Judge Advocate General's office referred 210 cases of civilians sentenced by military courts to the President. The President had the power to pardon, of course, and these cases reached his desk because of appeals from the accused, pleas from influential relatives, doubts on the part of the generals who reviewed court martials, or questions from the Judge Advocate General's office. Moreover, an act of Congress required death sentences resulting from military trials to be reviewed by the President.

Lincoln's action is noted in only 184 of the cases. The chart below shows what actions he recommended in these cases.

Lincoln's Use of the Pardoning Power in Cases of Civilians Tried by Military Commissions, 1863-1865

Advice	Approves Punishment	Mitigates Punishment	Increases Punishment
On recommendation of JAG	39	33	
Despite JAG recommendation	5	14	
On general's recommendation		14	
Despite general's recommendation	3	2	
On strong JAG recommendation	20	3	
Despite strong JAG recommendation		8	
No recommendation	23	20	

The last column stands as persuasive testimony to Lincoln's charitable instincts. It should be noted also that Lincoln's approval of punishment in four of the five cases, despite the JAG office's recommendation to increase the punishment, was in essence also Lincoln's refusal to increase the punishment on these same cases.



*From the Louis A. Warren
Lincoln Library and Museum*

FIGURE 2. *Harper's Weekly* was still celebrating the case of the pardoned sentinel as late as February 26, 1870.



*From the Louis A. Warren
Lincoln Library and Museum*

FIGURE 3. Joseph Holt.

In the fourteen cases in which Lincoln mitigated the punishment on the recommendation of a general, he was doing so despite the fact that the JAG did not endorse the general's recommendation. Those cases in which both a general and the JAG's office recommended mitigation are included in the category "On recommendation of JAG" (6 of the 33 cases). In other words, Lincoln was always looking for an excuse to pardon crimes and lessen punishments. All it took was some recommendation — from a general if not from the JAG — to make Lincoln's kindly heart respond. In only four cases did Lincoln's approval of the court's sentence constitute a tougher penalty than the JAG (one case) or the generals (three cases) thought proper.

Most often, Lincoln followed the recommendation of the JAG (95 of 184 cases). Judge Advocate General Joseph Holt was a tough man whose roots in strife-torn Kentucky helped him appreciate that rewarding loyalty and punishing disloyalty were the ways to keep the Union whole. Even so, his office found cause to pardon or to soften punishment in 19.6% of the cases referred to the President. Lincoln almost always found it easy to follow those suggestions.

The important statistics are those that document the ease with which Lincoln ignored the recommendations of the JAG's office for carrying out the punishments the military commissions had thought proper. He defied the military commissions in 12.9% of the cases that came to him (in 22.1% of the cases on which the JAG chose to give him advice). These were the actions not only of a forgiving and kindly man but also of a strong and independent President never afraid to act on his own judgment. When the choice was left entirely to the President, he mitigated punishments more than 50% of the time.

By mentioning loyalty and disloyalty earlier, this article may have given the impression that these cases involved what would be called political dissent today. One might thus imagine that in the cases under discussion here Lincoln's choice was easy and should have been easier. After all, the United States Supreme Court would eventually rule that military trials of civilians when the civilian courts were operating were illegal. Moreover, the Supreme Court would so rule in a case in which the accused, Lambdin P. Milligan, had taken no overt action but had been a member of a suspicious group and had spoken in a way that staunch supporters of the war effort usually did not.



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 4. Martial law was meant to protect Unionist refugees like these as well as to punish the disloyal.

Actually, one could describe most of these cases as matters of political dissent only if one could call the attempt to create the Confederate States of America and the Civil War that followed matters of political dissent. The citizens whose cases Lincoln adjudicated came overwhelmingly from the border area: Missouri (41.5% of the 147 cases identifiable by state), Tennessee (25.9%), Maryland (6.8%), Arkansas (4.8%), and Virginia (4.1%). Missouri and Tennessee thus accounted for two-thirds of the 147 cases. Both states were the scene of actual military operations, and Tennessee, of course, had seceded and was a part of the Union only to the degree that military power made it so. Since Missouri never seceded, disloyalty was a problem circumscribed by certain traditional constitutional limits, but martial law existed there as well.

The generals who declared martial law did not do so just to make it easier to enforce ideological purity on the local inhabitants. The following are the crimes for which the cases in Missouri were convicted (individuals were often accused of more than one crime; 61 individuals were responsible for these crimes):

Aiding and abetting enemy	1
Arson	1
Assault with intent to kill	2
Attempted robbery	1
Disloyalty	2
Encouraging rebellion	1
Grand larceny	3
Guerrilla	11
Larceny	2
Marauder	1
Military insurgent	2
Murder	6
Robbery	8
Selling government property	1
Spy	1
Taking up arms against U.S.	1
Violating Act of 17 July 1862	3
Violating Laws and Customs of War	21
Violating Military Orders	1
Violating Oath of Allegiance	23
Violating Dept. of Missouri Orders	1
Violating Parole	2

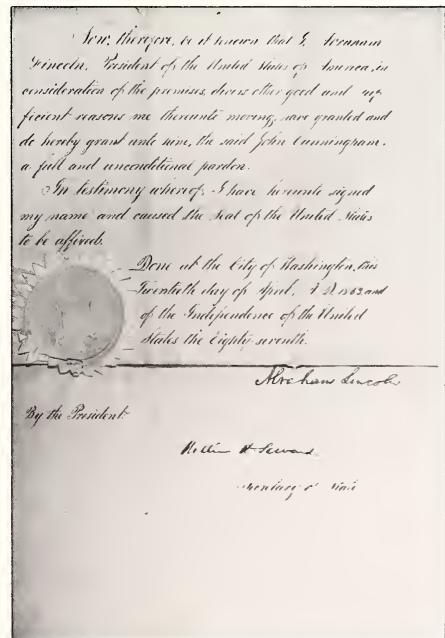
Where martial law is declared, the military supersedes the civil power. Nevertheless, in Missouri it did not do so entirely, and the civil courts clearly handled many cases even in areas

where martial law was in effect. William E. Parrish's history of Missouri in the Civil War era notes that martial law "by no means eliminated civilian courts or controls but relegated these functions to military supervision when demanded by the exigencies of war." He states further that:

Political prisoners usually had a fairly prompt hearing before a military board, which resulted in their being released on bond or banished, depending upon the severity of their case. If they had been involved in serious guerrilla activity, they could be sentenced to death or permanent imprisonment. In the latter case, they were usually transferred to the new federal prison at Alton, Illinois, which opened in February, 1862.

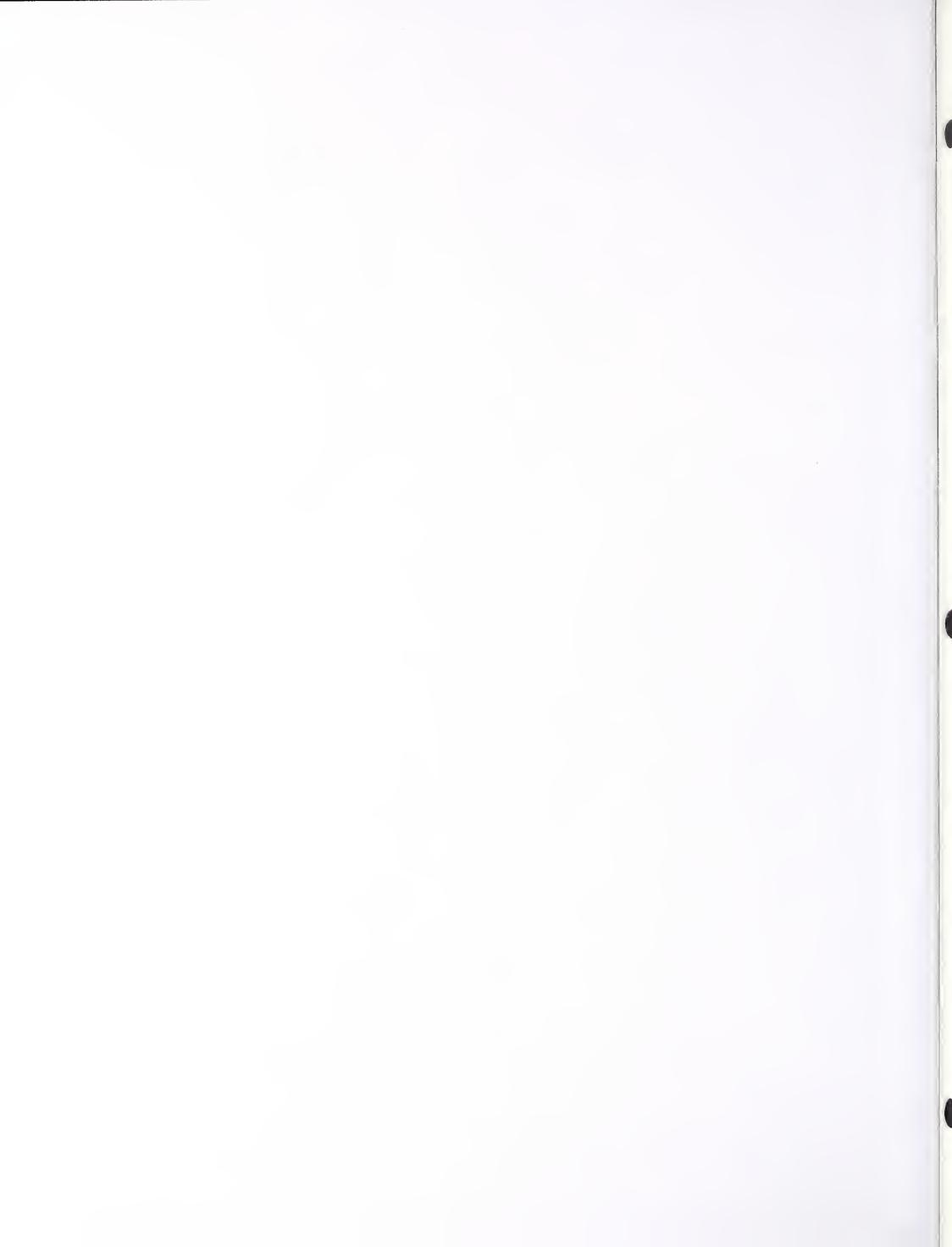
Although Confederate forces were driven out of Missouri after the Battle of Pea Ridge, March 7-8, 1862, the state became the scene of the most vicious guerrilla conflicts of the Civil War. William C. Quantrill, Dr. Charles R. "Doc" Jennison, and James H. "Jim" Lane gained unenviable reputations for ruthless waging of the sort of civil war that is not fought in uniform. Those guerrillas and others less famous sowed the seeds of bitter animosity which carried over into "feuding" and banditry long after the Civil War was over. Union soldiers and martial law did what they could to stop it. The names of many of those they stopped eventually wound up on President Lincoln's desk.

To judge from the cases on which Lincoln acted, one can say that military trials of civilians were exceedingly rare outside the Confederate and Border States. Among the 184 cases in which Lincoln took some action, no more than 12 involved Northerners outside the District of Columbia (which was officially under martial law), and it is not clear that all of these were tried in the Northern states of which the accused were citizens. Military trials of civilians occurred mainly in areas where the military commission was the only form of justice or where it was as likely to dispense justice as the local civil court was. Even then, its victims, if they may be called that, sometimes got another hearing before a singularly humane and forgiving President.



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 5. A Presidential pardon.





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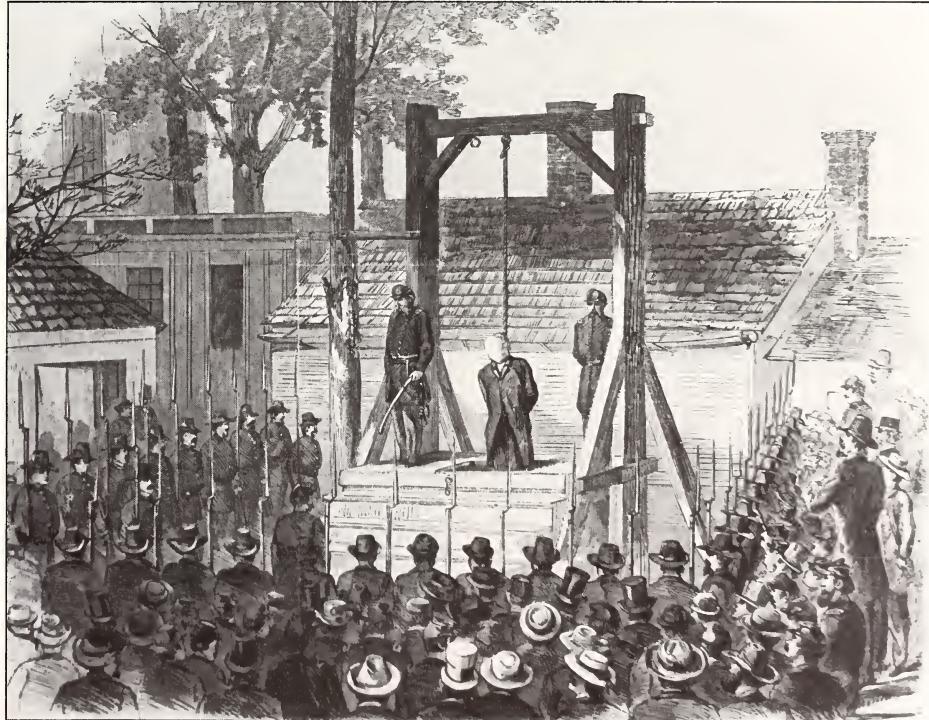
President Lincoln and the Insanity Defense

The preceding issue of *Lincoln Lore* showed that Abraham Lincoln, as a lawyer in Illinois, was quite familiar with the insanity defense. He lost the Wyant case when Leonard Swett successfully invoked the insanity defense for his client, and he soon thereafter recommended Swett to a friend in need of a lawyer to argue the insanity defense for his son.

When he became President of the United States, Lincoln did not leave such criminal matters behind him and devote his energies entirely to war and emancipation. Criminal justice was still an occasional concern for Lincoln because of the President's pardoning power. In such cases as came to his attention as President, Lincoln carefully saw to it that

defendants of questionable mental health were provided the opportunity to prove that their mental condition absolved them of responsibility for their crimes.

On August 3, 1863, Lincoln wrote Major General John G. Foster at Fort Monroe, Virginia, instructing him to send him the transcript of the trial of Dr. David M. Wright, if the doctor "has been, or shall be convicted." Within the week, Lincoln received a letter from Senator Lemuel J. Bowden, representing the loyal government of Virginia, asking the President to let him know when the transcript was received. Bowden wanted Lincoln then to fix a day when he and other Virginians "may appear before you and present the mass of testimony which has



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 1. Hangings of civilians sentenced to death by military commissions were not uncommon in slave states.

been taken to prove the insanity of Doctor Wright, and also to present such statements in regard to the manner of conducting his trial, and to the facilities afforded him for making anything like a fair defense, as the facts of the case will justify." On the 28th Lincoln was "ready to hear them."

The gentlemen from Virginia apparently came to Washington right away, and what they told Lincoln must have been something like this. David M. Wright was a respected physician who had practiced in Norfolk, Virginia, since 1854. Born in North Carolina, he was a medical graduate from the University of Pennsylvania. He had a son in the Confederate service from whom he had not heard since the Battle of Gettysburg, July 1-3, 1863. On July 11th at 4:00 in the afternoon, Dr. Wright encountered Lieutenant Anson L. Sanborn on Main Street in Norfolk. The lieutenant was marching at the head of a column of the First U.S. Colored Volunteers. Wright ran to his home, got a pistol, and insulted the lieutenant. Sanborn declared the doctor under arrest, and Wright shot him twice at point-blank range. Sanborn died and the provost marshal arrested Wright. He was tried by a military commission which refused to allow an insanity defense, despite evidence that Dr. Wright was noted for giving very peculiar prescriptions for his patients, that he was under the strain of worry about his son, and that his very moderate political views were inadequate to account for his sudden decision to murder the leader of some black troops in Virginia. The commission convicted him of murder and sentenced him to hang.

President Lincoln was not about to condone an execution prescribed by a military commission which followed no prescribed laws and which denied the defendant one of the standard protections of the law. He thought immediately of getting Dr. Charles H. Nichols of the Government Asylum for the Insane, in Washington, to review the case, but Secretary of State William H. Seward informed the President on September 2nd that Nichols's "surroundings are so disloyal as to shake public confidence in himself." Seward recommended Dr. John P. Gray of Utica, New York, instead.

William H. Seward had a commendable record on issues involving insanity. As early as 1843, his interest in the plight of the insane was well enough known that Dorothea Lynde Dix, the famous reformer, came to Auburn, New York, Seward's home town, to seek advice on her campaign to improve the treatment of the mentally ill. In 1846 he defended Henry Wyatt, a Negro accused of murder, on the grounds that he was insane. He lost the case, and Wyatt was sentenced to hang. He also defended a more sensational murderer, William Freeman, also a Negro, who slayed four people in an innocent farmer's home in 1846. Seward also invoked the insanity defense in this case, and he and the opposing counsel, Democratic politician John Van Buren (son of the President), called numerous doctors to testify. The jury found Freeman guilty. The New York Supreme Court later overturned both verdicts.

Dr. John P. Gray was one of the most eminent specialists in mental medicine in the country. Seward knew him as the Superintendent of the Utica State Asylum and consultant to the state asylum for the criminally insane in Auburn, but he was also editor of the *American Journal of Insanity*, the official organ of the nineteenth-century equivalent of the American Psychiatric Association. He frequently testified in trials involving persons who claimed to be insane.

On September 10th President Lincoln assigned Dr. Gray his duties in the Wright case. The doctor was to go to Fort Monroe "and take in writing all evidence which may be offered on behalf of Dr. Wright and against him, and any, in addition, which you may find within your reach, and deem pertinent; all said evidence to be directed to the question of Dr. Wright's sanity or insanity, and not to any other questions; you to preside, with power to exclude evidence which shall appear to you clearly not pertinent to the question." The key phrase may well have been "you to preside"; Lincoln was giving this case strictly a civilian review. He did not want to follow the rules of a military commission. The commanding officer at Fort Monroe was to have an officer present to act "as Judge Advocate or Prosecuting Attorney," but otherwise he was to assist Gray

and be sure to notify Senator Bowden or one of his Virginia associates.

Dr. Gray called thirteen witnesses for Wright and thirteen for the government, and he interviewed Dr. Wright for about two hours. He learned a great deal about this curious murderer. As a boy, Wright had had a horror of blood and could not shoot birds; yet he became a physician. Early in his life, he had rather Northern ideas about slavery, especially for a man born and raised in North Carolina. He owned a few slaves himself but allowed them to select new masters and sold all of them.

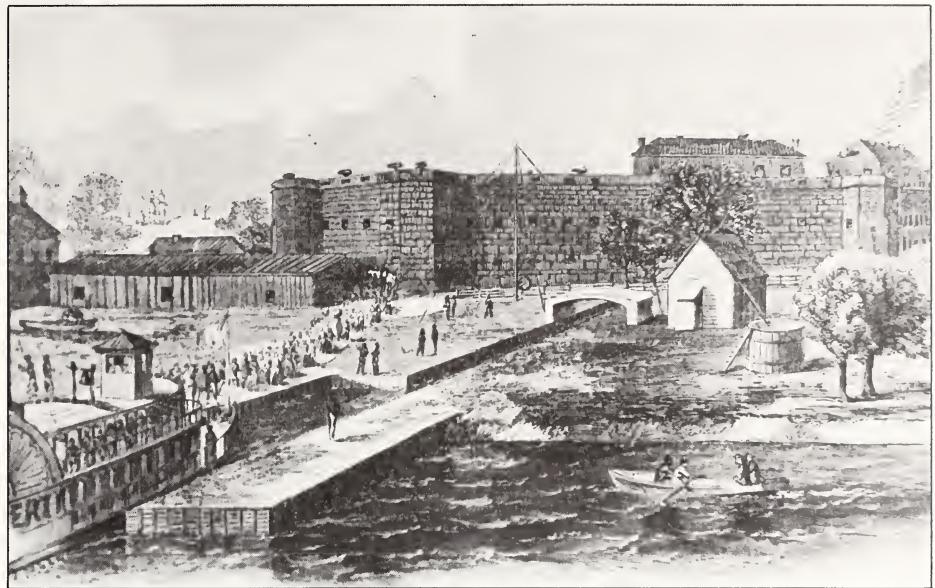
Later, Dr. Wright changed his mind, deciding that slavery was in accordance with the scriptures and best suited the true welfare of the black race. He had Negro servants by the time of the Civil War and a farm in North Carolina which was worked by slaves. He was consistently kind to his servants. When, because of the proximity of Federal troops, most servants were leaving their masters, Dr. Wright called his together, told them he could not really blame them for wanting to leave, and said that any who did not fare well on their own could come back to him. He had an agent give his superannuated housekeeper meat twice a week until she could maintain herself financially. His slaves in North Carolina chose to remain on the plantation as slaves.

In politics, Dr. Wright had been a Whig and was thought of in the 1850s as a Union man. Gradually he became more Southern in feeling and eventually voted for Virginia's secession, claiming that the act would save the Union by restoring it to its proper basis. When the Yankees took Norfolk, he counseled "dignified non-intercourse, and abstaining from all violence." He kept at his practice and showed no particular animosity toward black soldiers, though he thought arming the Negroes a great wrong.



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 2. William H. Seward was among the most celebrated lawyers of Lincoln's day. His defenses of black clients should be famous not only for the color of the client but also for the use of the insanity defense.



*From the Louis A. Warren
Lincoln Library and Museum*

FIGURE 3. Fort Delaware was one of the infamous "Bastilles of the North." Along with the occasional newspaper editors and Democratic politicians, they usually contained deserters, spies, blockade runners, and a few lunatics.

Dr. Wright had been on the way home to prepare for his daily patient visitation when he saw Lieutenant Sanborn and his black soldiers. He was seized with an "uncontrollable impulse" to kill Sanborn. After the deed was done, Dr. Wright attempted to help Sanborn medically and apparently expressed a wish that the soldiers would bayonet him for his deed.

Wright was not a church member, but he had long read prayers to his family. After his incarceration, he was baptised and received in the church.

Dr. Gray decided that Wright may have acted under an "uncontrollable" impulse but not under an insane impulse. He noted that a government chemist found nothing bizarre about the doctor's prescriptions. Gray cited the facts that Wright had no hallucinations and no previous symptoms of insanity as evidence that the murder was a deliberate act. And Dr. Gray stated flatly that latent insanity which suddenly appears does not disappear immediately after the first insane act. Dr. Wright had appeared perfectly sane in his interview with Gray and throughout his confinement after the crime.

On October 23, 1863, David M. Wright was hanged. President Lincoln had done all he could.

It was not the last time Lincoln would consult Dr. Gray. On March 7, 1864, the President received the papers on the court martial of Lorenzo C. Stewart (alias Shear), a private in the Fourteenth New York Artillery. Stewart had been convicted of desertion and murder (poisoning soldiers). Lincoln asked Judge Advocate General Joseph Holt for a report on the case and on April 14th approved the execution, which was to occur on the 22nd. A petition for clemency from citizens of Elmira, New York, was apparently received in Washington on the 14th. It must have alleged insanity as a mitigating factor, and Lincoln apparently postponed the execution. On the 25th he wrote Dr. Gray again.

President Lincoln gave Gray precisely the same instructions

he had given in the previous case. The result for Private Stewart was different, however. On January 25, 1865, Lincoln commuted his sentence to imprisonment in the penitentiary at hard labor for ten years.

On his last birthday, President Lincoln again considered insanity as a mitigating factor in the case of a man sentenced by court martial, or, more likely, military commission. Dr. Edward Worrell, a citizen of Delaware, had been sentenced to imprisonment for one year for aiding a prisoner to escape from Fort Delaware, one of the notorious "Bastilles of the North." The records are fragmentary, but, apparently, on evidence presented by Judge George P. Fisher that Dr. Worrell was "partially insane," Lincoln had him discharged from Fort Delaware.

Abraham Lincoln was a good lawyer and a humane man, but he was not a philosopher of jurisprudence. He sought justice in the practical ways defined by existing laws. The insanity defense was a part of the legal system within which he practiced as an attorney and which he administered as President. With considerable vagueness and without, as yet, a great deal of philosophical exegesis, that legal system recognized the injustice, as William H. Seward put it in his rare eloquence in defense of William Freeman, "of trying a maniac as a malefactor." Lincoln, as his law partner William H. Herndon recalled, "was a very patient man generally, but if you wished to be cut off at the knee, just go at Lincoln with abstractions, glittering generalities, indefiniteness, mistiness of idea or expression." He "never undertook to fathom the intricacies of psychology," and applied "his powers in the field of the practical." Common sense told him that insane acts were innocent acts. As a lawyer he embraced the insanity defense when it seemed proper. He had more power as President, and he supplied an insanity defense when courts failed to. There was no other way to serve the cause of justice properly.



